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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Paper No. 14

Application Number: 09/504,343

Filing Date: February 14, 2000

Appellant(s): PARENT ET AL.

Michael B. Stewart, Reg. No. 36,018, Charles A. Bieneman Reg. No. 51,472
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12 December 2003.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

No amendment after final has been filed.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claim 1, claims 2-3, 10-18, and 21, claims 4, 6 and 7, claims 8 and 9, claim 5, and claims 19 and 20 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *ClaimsAppealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

6,014,644	ERICKSON	6-1998
6,161,099	HARRINGTON et al.	12-2000
5,774,873	BERENT et al.	6-1998

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Response to Amendments/Arguments

The Examiner withdraws the 101 rejection applied to claims 16, 17, 19 and 20.

The Examiner has carefully considered the Applicant's arguments but they are found to be non-persuasive.

Claims 1-7 and 10-21

1. Regarding "second user" the Applicant correctly points out that Erickson teaches the buyer requests bids from suppliers (paper no. 9, page 11, item 1, last line, second paragraph). The supplier of the Erickson system meets the limitations associated with a second user, as the supplier searches for bid requests and inputs data into a market database for first users to construct said bid request (column/line 2/65-3/12; column 3, lines 13-30 and 43-51; column 7, lines 14-18) and in response to first user actions, makes bids on bid requests (e.g. assets) (column/line 3/43-5/32; column/line 13/5-14/55).

2. The Applicant contends that it would not be obvious to modify Erickson to encompass purchases, rental and lease transactions. The Examiner respectfully disagrees. Claim 1 recites “at least one of...” therefore, as Erickson discloses purchasers (column 1, lines 28-57), the prior art reads on this limitation. However, to one of ordinary skill, “purchases” represent just one of a plurality transactional methods for obtaining goods and services. Others are trade, rent, time-share or leasing. Hence, it would have been obvious to one of ordinary skill to use parameters that associated with buying, trading, rent... etc. Further, this data, i.e. data associated with a rental transaction, is non-functional, as the claim[14] does not define a structural relationship between the system and the description of the data. If “rental” is replaced with “trade”, for example, the claimed system performs the same way.

3. Similarly, “maintenance history data” is also non-functional and descriptive material will not distinguish the claimed invention from the prior art in terms of patentability (*In re Gullack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994)). Nonetheless, to one of ordinary skill, maintenance history data comprises descriptive information, VIN, condition and grade information to allow for proper vehicle identification, and description of the condition of a vehicle prior to service.

4, 5. Regarding classes of users, organizing data is helpful in terms of storing, retrieval and analysis. Erickson teaches organizing data by classes

(column 3, lines 1-13 and 42-51; column 9, lines 34-50). Hence, it would have been obvious to one of ordinary skill to organize data, using classification, whenever appropriate (e.g. “approved suppliers”, “dealers”, suppliers of a class of goods or services- construction, medical, computer hardware) (column 16, lines 1-18), where the name of the class is merely a matter of design choice. Erickson teaches a buyer assembling a subset of suppliers to receive a buyer interest in a good or service (column 8, lines 28-38), hence Erickson teaches, “a bidder classification parameter defining classes of users allowed to place a bid”.

6. Erickson teaches user registration. Specifically, Erickson teaches a supplier submitting registration information by supplier class (column 7, lines 46-58), while Harrington et al. teach (claim 8) list price and minimum price (figure 15).

Claims 8 and 9

Harrington et al. teach “list price for a pre-determined period of time” and “minimum price”. Regarding “bid defining parameters associated with one of a purchase, rent, or lease...”, recall Erickson teaches first users providing bid definition parameters comprising amount of goods supplied, total bid cost or any other type of information desired by a first user (column 3, lines 63-65; column/line 3/66-4/5). Hence, it would have been obvious to include whatever information a first user felt necessary to include in order to receive the best

responses from suppliers, such as lease data. The Examiner would like to point out that, "list price...", "periodic lease amount..." and "minimum price" are also non-functional, descriptive data.

The Examiner maintains the art rejection to claims 1-21.

Claim Rejections - 35 USC § 103

Claims 1-7, and 10-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Erickson, U.S. Patent No. 6,014,644 in view of Berent et al., U.S. Patent No. 5,774,873.

As per claims 1-7, and 10-21, Erickson teaches an electronic system for facilitating transactions comprising:

- an asset configuration unit responsive to input data provided by a first user for generating a profile of an asset (e.g. asset specification data and parameters that define a bid) (figure 1; column/line 3/43-4/5)
- a market database for storing a plurality of asset profiles and a search module configured to search the database, generate an identification of assets according to the search parameters and displaying asset specifications (figures 1 and 5; column 3, lines 43-51; column 7, lines 35-67; column 8, lines 27-38; column 9, lines 3-67)

- a bid module to allow a user to bid on an asset and a communications interface to allow remote access to the system (figure 1; column/line 13/10-14/12)
- a bid history, choosing data from bid history and use it to complete a transaction (column 1, lines 28-39; column/line 3/42-5/21)

Regarding lease, rent or purchase data, it would have been obvious to one of ordinary skill to use the Erickson system to bid on contracts for the lease, rent or purchase of supplies using the data message feature or central database (column 9, lines 50-67; column/line 13/21-14/13) as these are well known methods for obtaining goods and services. Erickson also discloses user identification and classification data for describing a company (column 7, lines 44-67; column 9, lines 5-27 and 37-49) and a buyer searching the central database and creating a list of suppliers (column 8, lines 27-39). Hence, it would have been obvious for a company to characterize itself as a product "dealer" as it would facilitate a buyer locating and selecting a desired supplier (column 7, lines 56-62). However, Erickson does not explicitly recite maintenance information, Berent et al. teach a motor vehicle auction that includes maintenance history (column 9, lines 20-39). Berent et al. also teach bid and delivery dates (figure 7B; column 2, lines 11-14 and 22-26), as well as bid classification parameters that define classes of users allowed to bid on an asset (e.g. member class) (column

4, lines 38-52). Therefore, it would have been obvious to one of ordinary skill to combine the teachings of Erickson and Berent et al. in order to provide users with a trusted commerce system by allowing users to view vehicle history ('873, column 9, lines 20-39) along with other product information ('644, column 9, lines 50-67).

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Erickson, U.S. Patent No. 6,014,644 in view of Berent et al., U.S. Patent No. 5,774,873 as applied to claims 4 above, and further in view of Harrington et al., U.S. Patent No. 6,161,099.

As per claims 8 and 9, Erickson teaches a communications network that allows users to bid on products (abstract; figure 1; column 2, lines 56-65). In addition, as Erickson teaches providing prospective buyers with product information such as class, price and any other type of information necessary to identify a particular product (column 9, lines 38-67) it would have been obvious to provide rental, lease or purchase data. Berent et al. teach an online auction system that defines classes of users, such as those that are allowed to bid on an asset (column 4, lines 38-52). However, neither reference teaches a minimum price that a user must submit in order to define a valid bid. Harrington et al. teach an auction system that systematically validates bids according a minimum price (figure 12; column 10, lines 13-21). Therefore, it would have been obvious to one

of ordinary skill to combine the teachings of Erickson, Berent et al. and Harrington et al. in order to allow a buyer to more efficiently review bids by only permitting bids that conform to a buyer's specification ('099, column 4, lines 56-67).

(11) Response to Argument

The Appellant is of the opinion that the Examiner's rejection was faulty because, 1) there is no reason to modify Erickson nor combine Erickson with the teachings of Berent et al., and Harrington et al., 2) the prior art fails to teach all the limitations of the "second user" of claims 1, 14 and 18, and 3) the prior art does not disclose a "bid definition defining parameters associated with one of a purchase, rental and lease transaction of said asset". In addition, the Appellant also challenges the Examiner's consideration of certain claim language as "non functional" and asserts that the prior art does not teach "maintenance history data", "classes of users" and processing classes of users, "transaction characteristic data", minimum price and lease transaction data. The Examiner respectfully disagrees.

In the Examiner's analysis of the claims and the prior art, the Examiner fully considered the fact that the Appellant's *disclosure* is dedicated to sell-side auctioning while the prior art of Erickson teaches a buy-side system. However, the Appellant's claims are broad enough to read on the teachings of Erickson. The Appellant's claims

are broad and use general auctioning terms such as "asset" and "bid" that are not limited to "traditional" sell-side auctions. In order to emphasize any distinctions between the two types of auctions, the Appellant could have easily identified and specified the actions of the buyer and seller. Instead, the Appellant chose to remain broad and rely on the teachings from the Appellant's Specification (*In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993)) and on general, non-specific language such as "first user" and "second user" which allowed the Examiner to apply the prior art of Erickson.

There is no reason to modify Erickson nor combine Erickson with the teachings of Berent et al., and Harrington et al.

Erickson, Berent et al. and Harrington et al. are each dedicated to the auctions ('644, abstract; '873, abstract; '099, abstract). Specifically, Erickson teaches a system that allows a buyer or seller to obtain or distribute any goods and/or service ('644, column 8, lines 28-30). Therefore, it would have been obvious for one of ordinary skill to look at the teachings of Berent et al. for a method of distributing automobiles ('873, abstract). It is not necessary for one of ordinary skill to "teach away" from the disclosure of Erickson in order for one of ordinary skill to apply the Erickson system to a "buyer wishing to buy" cars ('644, column 8, lines 28-30). Regarding the combination of

Harrington et al., to one of ordinary skill it would have been obvious to seek methods for making the process bid receiving process of Erickson more efficient from teachings within the art. Specifically, Harrington et al. teach an auction system that allows a user to exert finer control over the process by imposing systematic restrictions on that require responses to satisfy a particular condition such as "minimum price" in order to be accepted by the system ('099, figures 12 and 15). Further, such a teaching in the hands of an artisan of ordinary skill, would not restrict such an artisan from considering or applying other methods of restricting responses. On the contrary it would open up a world of possibilities as said artisan now has knowledge that such a thing is possible. Therefore, a "minimum" can merely represent the lower price in a range of prices mandated by the buyer or a single price, such as an optimum price that the supplier must meet. In this instance the single optimum price is both a maximum and a minimum. In the analysis of claim 8, the Appellant has given more weight to the term "valid" then it deserves. Valid to whom? The system? The first user? The Appellant has not defined valid. Nor is the system, according to the claims, able to differentiate between valid and invalid bids. The Appellant does not recite a determination step where the system tests the bid for validity. The claim as it is written is broad enough to read on, in light of Erickson, a buyer reviewing supplier responses, with a particular price in mind (e.g. minimum price) and selecting a supplier bid with the lowest price (e.g. valid bid). The MPEP states (Chapter 2106, 2100-06),

The subject matter of a properly construed claim is defined by the terms that limit its scope. It is this subject matter that must be examined. As a general matter, the grammar and intended meaning of terms used in a claim will dictate whether the language limits the claim scope. Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation.

Claim 1 is recited in the alternative. In other words, it can be a purchase, rental or lease. The Examiner is within the legal bounds to consider "purchases", hence, claims that depend from claim 1 and refer to "leases" or "rentals" do not occur. For example, claim 8 refers to a "rental transaction" and claim 9 is applied to "lease transactions". Claim 6 recites, "an identification of which of said purchase, rental and lease transactions are available", therefore, if only purchases are available, claim 8 doesn't occur.

The prior art fails to teach all the limitations of the "second user" of claims 1, 14 and 18

The Appellant is of the opinion that the prior art of Erickson does not teach a second user searching a database to identify assets on which to place a bid. Initially, in order to fix ideas the Examiner will reiterate Examiner's position spelled out in paper No. 10, page 2. Explicitly, in the Examiner's appliance of the Erickson reference the first user is the "buyer" and the second user is the at least one seller that responds to the buyer's "request for bids", (644, column 16, lines 34-43). Regarding the actions of the

supplier/second user, Erickson clearly states that a supplier may browse buyer information stored in the central database in order to

...gauge the size of a particular market or may allow a particular supplier to locate and contact buyers wishing to purchase specific goods or services. In addition, such information may allow supplier [12] to tailor goods or services to the particular needs of a segment of the market (column 8, lines 18-27)

Note, Erickson does not place limitations on the system by preventing a buyer from receiving a unsolicited bids. Further, a supplier can use the information stored in buyer information portion of the central database ('644, column 8, lines 1-27) to better craft a response if the supplier does receive a "request for bid" ('644, column 14, lines 40-43).

The prior art does not disclose "bid definition defining parameters associated with one of a purchase, rental and lease transaction of said asset"

Regarding the limitation of claim 1, "a bid definition defining parameters associated with one of a purchase, rental and lease", it is important to point out that in order to read on the above limitation the prior art need only identify a purchase or a rental or a lease. Initially, the Appellant attempts to distort the record by stating that the Examiner admits that Erickson doesn't teach "bid definition" (Brief on Appeal, page 11, lines 10-11). This is clearly not the case as the Examiner, upon reviewing the Final Office Action, cannot find such a recitation. More specifically, this is a feature taught by Erickson as a first user (i.e. buyer) defines in the buyer bid request or in the buyer

information portion of the central database, parameters which a second user (i.e. suppliers) responding to the buyer's actions, will use when crafting a bid or response ('644, column 8, lines 1-27; column 13, lines 30-60; column 14, lines 15-33; column 15, lines 51-55). Hence, the prior art teaches "bid definition" as in claim 1 it is the second user (Erickson's supplier) that places the bid and not the first user (Erickson's buyer).

Regarding motivation to modify Erickson to encompass rental, purchase, or lease transactions, Erickson teaches buyers creating a data cast message that is sent out to suppliers as a request to receive bids that spell out the commercial desires, requirements, and/or specifications of the buyer (column/line 3/52-4/21). Specifically, the data cast message may contain **any** type of information that a supplier would need in order to respond to a "request for bid" ('644, figure 3A; column 13, lines 38-42). Hence, as "renting", "leasing" and "purchasing" clearly fall under the category of "any type of information", the Erickson teaching is elastic enough to encompass such transactions. Further, it has been held that when considering a reference, it is pertinent to point out not only specific teachings of patent, but also the **reasonable inferences**, which one skilled in the art would logically draw therefrom (*In re Shepard*, 138 USPQ 148 (CCPA 1963)). Therefore, commercial agreements such as lease, rent or purchase are at least suggested by the prior art of Erickson. However, if Appellant is unfamiliar with these terms, Barron's Financial Guides, Dictionary of Finance and Investment Terms defines "buy" (syn. with purchase) as "acquire property in return for money" and "lease" as a "contract granting use of real estate, equipment, or other fixed assets for a

specified time in exchange for payment, usually in the form of rent". Webster's Ninth New Collegiate Dictionary defines rent as "fixed periodical return made by a tenant or occupant of property to the owner for the possession and use thereof", and "rent-a-car" as "a rented car".

Regarding "non functional data" (Brief on Appeal, page 13, section 2), the MPEP section 2106, VI. Determine Whether The Claimed Invention Complies With 35 U.S.C. 102 AND 103 states,

Office personnel must determine whether the descriptive material is functional descriptive material or nonfunctional descriptive material, as described supra in paragraphs IV.B.1(a) and IV. B.1(b) (see 2106, section VI, second paragraph)

The MPEP provides an example,

a process that differs from the prior art only with respect to nonfunctional descriptive material that cannot alter how the process steps are to be performed to achieve the utility of the invention

Again the Examiner would like to point out *the claim language requires that the prior art only have one of purchase, lease or rental*. The prior art in order to read on the Appellant's claim 1 need only have one of the three. Nonetheless, whether it's purchase, lease or rental the process steps are the same. The Appellant states, "the second user is provided with different kinds of transactions depending on the bid definition" (Brief on Appeal, page 14, lines 9-14). This is not the case. According to claim 1, the first user creates a profile of an asset and this asset profile is stored in a database (claims 1, first and second limitations). However, the second user merely

searches the database in order to generate *an identification of assets* that match the second users search parameters (claim 1, third limitation). Note, the market database contains a plurality of asset profiles (claim 1, second limitation) of which the second user draws at least one and perhaps none. Therefore, according to claim 1, the second user can perform a search and not come across the profile created by the first user. Hence, the Appellant's assertion that "the system presents to the user different functionality depending on the bid definition" is not supported by claim 1 (Brief on Appeal, page 14, lines 9-14).

Similarly, the same holds for the "maintenance data" of claims 2 and 14, as it does not affect the Appellant's process such that it differs from the prior art only with respect to achieving the utility of the invention. The maintenance data is not used or transformed by the process, hence it is also non-functional. However, the Examiner, in order to reject claims 1-7 and 10-21, combined the teachings of Berent et al. with system of Erickson. Berent et al. teach a system for auctioning motor vehicles that includes information about the vehicle being auctioned ('873, column 9, lines 11-14 and 22-26). The term "maintenance history data" is general. It is broad to encompass data that is found in maintenance history such as vehicle ID, "make" and "model" in order to identify and track the car in a database. The "grade" or "condition" of a car prior to service in order to identify what repairs were done. Would the Appellant have one of ordinary skill believe that VIN#, "make" and "model" are not pertinent to maintaining an accurate vehicle history. Berent et al. disclose "pre-owned" and "used" cars for auction

('873, column 1, lines 14-20). Therefore, to one of ordinary skill the reference at least suggests the inclusion of more specific maintenance history data as a part of the "information about the vehicle" in order to provide the user with information necessary to make an informed decision regarding the placement of a bid, and to present an image of honesty and fairness.

Regarding classification of users, claim 4 recites, "a bidder classification parameter defining classes of users allowed to place a bid on said asset". Erickson teaches suppliers identifying themselves in a supplier profile stored in the central database as an "approved supplier" ('644, column 9, lines 11-14). Hence, in a "request for bid" data cast message a buyer can limit acceptable suppliers to only "approved suppliers". Recall, a "request for bid" data cast message defines parameters which a second user (i.e. suppliers) in response to the buyer's request, will use when crafting a bid or response ('644, column 8, lines 1-27; column 13, lines 30-60; column 14, lines 15-33; column 15, lines 51-55). Erickson also teaches that, in order to help a buyer locate *companies* or products the central database may also contain classifications ('644, column 9, lines 37-40) (note: the central database of the Erickson system contains company profiles of suppliers that allow a buyer to find more information about a particular supplier- column 9, lines 3-14). Berent et al. offer a more restrictive approach by requiring prospective bidders to enter a username and password, and through the assignment of network "privileges" ('873, column 4, lines 38-52). Hence, it would have been obvious to one of ordinary skill in computer system security to

implement the authentication measures of Berent et al. in order to create a more secure auction network ('644, figure 1). Although, the Appellant attempts to distinguish "naming" from "defining" the two are synonymous. For example, the name or title "President", "MVP" or "Oscar winner" identifies the essential qualities or meaning of the position or person holding said position (Webster's Ninth New Collegiate Dictionary, to "define").

The Examiner in the response to Appellant's communication dated June 26 answered the Appellant's arguments in the following Office Action (see paper no. 10 or the reprint of said above in section 10 above) the preceding merely re-emphasizes the Examiner's position.

Transaction characteristic data, minimum price and lease transaction data, etc.

Harrington et al. teach an auction system that allows a user to exert finer control over the process by imposing systematic restrictions on that require responses to satisfy a particular condition such as "minimum price" in order to be accepted by the system ('099, figures 12 and 15). Further, such a teaching in the hands of an artisan of ordinary skill, would not restrict such an artisan from considering or applying other methods of restricting responses. On the contrary it would open up a world of possibilities as said artisan now has knowledge that such a thing is possible. Therefore, a "minimum" can merely represent the lower price in a range of prices mandated by the buyer or a single

price, such as an optimum price that the supplier must meet. In this instance the single optimum price is both a maximum and a minimum. In the analysis of claim 8, the Appellant has given more weight to the term “valid” than it deserves. Valid to whom? The system? The first user? The Appellant has not defined valid. Nor is the system, according to the claims, able to differentiate between valid and invalid bids. The Appellant does not recite a determination step where the system tests the bid for validity. The claim as it is written is broad enough to read on, in light of Erickson, a buyer reviewing supplier responses, with a particular price in mind (e.g. minimum price) and selecting a supplier bid with the lowest price (e.g. valid bid). The MPEP states (Chapter 2106, 2100-06),

The subject matter of a properly construed claim is defined by the terms that limit its scope. It is this subject matter that must be examined. As a general matter, the grammar and intended meaning of terms used in a claim will dictate whether the language limits the claim scope. Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation.

Claim 1 is recited in the alternative. In other words, it can be a purchase, rental or lease. The Examiner is within the legal bounds to consider “purchases”, hence, claims that depend from claim 1 and refer to “leases” or “rentals” do not occur. For example, claim 8 refers to a “rental transaction” and claim 9 is applied to “lease transactions”. Claim 6 recites, “an identification of which of said purchase, rental and lease transactions are available”, therefore, if only purchases are available, claim 8 doesn’t occur.

Erickson teaches suppliers identifying themselves in a supplier profile stored in the central database as an "approved supplier" ('644, column 9, lines 11-14). Hence, a "request for bid" data cast message a buyer can limit acceptable suppliers to only "approved suppliers". Recall, a "request for bid" data cast message defines parameters which a second user (i.e. suppliers) in response to the buyer's request, will use when crafting a bid or response ('644, column 8, lines 1-27; column 13, lines 30-60; column 14, lines 15-33; column 15, lines 51-55). Erickson also teaches that, in order to help a buyer locate *companies* or products the central database may also contain classifications ('644, column 9, lines 37-40) (note: the central database of the Erickson system contains company profiles of suppliers that allow a buyer to find more information about a particular supplier- column 9, lines 3-14). Therefore, as "dealer" and "member" are classifications these features are at least suggested by Erickson. Regarding "registration" the Appellant has not specified particular features that comprise a "registration" (claims 19 and 20). Therefore, giving the term its broadest reasonable interpretation, the process of creating a buyer or supplier profile in the central database is sufficient to read on the act of registering as Erickson places no restrictions on how a buyer or supplier may characterize itself.

Conclusion

Appellant's arguments are not persuasive in that they fail to consider the breadth of the claim language. The Appellant's claims are broad due to the Appellant's use of

non-functional and optional language and the Appellant's over-reliance on the use of general terms such as "valid", "first user", and "maintenance history data" without characterizing said terms such that their meanings are specific and not merely "dictionary definitions". The Appellant also does not give fair credit to the knowledge of one of ordinary skill in the art of commercial transactions (buying, leasing, renting) and therefore does not fully appreciate the teachings of Erickson that allows first users to create a data cast message as a "request for bid" that contains all the information that a supplier would need in order to respond to a bid ('644, column 13, lines 30-32).

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

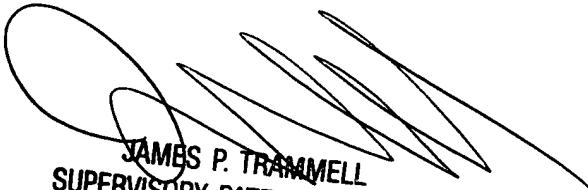
Calvin Loyd Hewitt II
February 6, 2004

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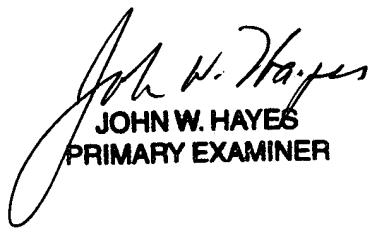
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